(3)

No. 95-1830

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

JAMES GOMEZ, Director, California Department of Corrections, and ARTHUR CALDERON, Warden, *Petitioners*,

v.

DAVID FIERRO and ALEJANDRO GILBERT RUIZ, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Did the Court of Appeals properly affirm the District Court's judgment that execution by the administration of lethal gas in accordance with the California Department of Corrections Procedures violates the Eighth Amendment based on the unchallenged and extensive factual findings by the District Court that inmates who are put to death in the gas chamber at San Quentin State Prison suffer extreme and unnecessary pain for prolonged periods of time?

THE PARTIES

United States Supreme Court Rule 12.4 provides that "[a]ll parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below has no interest in the outcome of the proceeding." Petitioners' caption does not include the name of plaintiff-appellee-respondent Robert Harris, who was a party in the proceedings before both the District Court and the Court of Appeals. Although petitioners executed Mr. Harris on April 21, 1992, no motion pursuant to Rule 25(a) of the Federal Rules of Civil Procedure or Rule 43 of the Federal Rules of Appellate Procedure was brought to remove his name from the caption of this case. Respondents' counsel has received no notice that the Clerk of this Court was notified by petitioners as required by Rule 12.6. Because this Court automatically assigns unnamed parties the role of respondent, *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 n. 17 (1979), a role Mr. Harris would have had he been properly named in the petition's caption, this brief is filed on his behalf as well as that of respondents David Fierro and Alejandro Gilbert Ruiz.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondents David Fierro and Alejandro Gilbert Ruiz (hereafter "respondents") respectfully request that this Court deny the Petition for Writ of Certiorari (hereafter "Petition") filed by petitioners James Gomez and Arthur Calderon (hereafter "petitioners"). The circuit court's unanimous decision is nothing more than the acceptance of the District Court's detailed and well-supported factual findings and the simple application of this Court's Eighth Amendment jurisprudence to the unique facts of this case. *Fierro v. Gomez*, 77 F.3d 301 (9th Cir. 1996). Although petitioners may disagree with the result, this case presents no "compelling reasons" requiring review by this Court. See S. Ct. R. 10.

STATEMENT OF THE CASE

In April 1992, respondents, California inmates sentenced to death, filed this action in the District Court challenging the constitutionality of California Penal Code section 3604, which then provided that the "punishment of death shall be inflicted by administration of a lethal gas."

Subsequent to the filing of this action, plaintiff Robert Harris was executed in the gas chamber at San Quentin State Prison on April 21, 1992. The official Execution Record, prepared by San Quentin doctors during the pendency of this action, documents that Mr. Harris did not die until sixteen minutes after he first inhaled the poisonous gas. For at least two to three minutes of the execution process, Mr. Harris unquestionably was conscious and experiencing excruciating pain. *Fierro v. Gomez*, 865 F. Supp. 1387, 1402 (N.D. Cal. 1994), *aff'd*, 77 F.3d 301 (9th Cir. 1996).

Shortly after Robert Harris's execution, in direct response to this litigation, the California Legislature amended Penal Code section 3604. 1992 Cal. Stat. ch. 558. Section 3604 currently provides that executions are to be conducted by the administration of lethal gas unless the condemned inmate affirmatively chooses execution by lethal injection. Cal. Penal Code § 3604 (West. Supp. 1996).

In August 1993, the State of California applied the new statute to Mr. David Mason, a condemned prisoner who had waived federal review of his state conviction and death sentence. Mr. Mason did not choose to be executed by lethal injection, and, pursuant to the revised section 3604, was executed by lethal gas on August 24, 1993. Accounts from all sources point to the inescapable conclusion that Mr. Mason was conscious at least three minutes after the hydrogen cyanide gas was administered, and that Mr. Mason suffered a painful and prolonged death by suffocation. *Fierro v. Gomez*, 865 F. Supp. at 1402.

Following Mr. Mason's execution, the District Court conducted an eight-day bench trial. On October 4, 1994, after meticulously documenting the compelling evidence presented by respondents regarding the executions of Mr. Harris, Mr. Mason, and every other person executed in California's gas chamber, the District Court found that inmates who are put to death by cyanide gas in the gas chamber at San Quentin are conscious and experiencing excruciating pain for several minutes:

> [I]nmates who are put to death in the gas chamber at San Quentin do not become immediately unconscious upon the first breath of lethal gas. The court further finds that an inmate probably remains conscious anywhere from 15 seconds to one minute, and that there is a substantial likelihood that consciousness, or a waxing and waning of consciousness, persists for several additional minutes. *Id.* at 1404.

The Court further found that lethal gas executions, which cause death by asphyxiation, inflict severe pain:

> During this time, the court finds that inmates suffer intense, visceral pain, primarily as a result of lack of oxygen to the cells. The experience of "air hunger" is akin to the experience of a major heart attack, or to being held under water. Other possible effects of the cyanide gas include tetany, an exquisitely painful contraction of the muscles, and painful build-up of lactic acid and adrenaline. Cyanide-induced cellular suffocation causes anxiety, panic, terror, and pain. *Id.* (citations omitted).
>
> In addition to its findings on the pain inherent in executions by cyanide gas, the District Court also found, based on the comprehensive and unrebutted evidence that
>
> [t]here is a national consensus rejecting the use of the gas chamber as an acceptable method of execution. Since capital punishment was reenacted following the United States Supreme Court decision in *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976), the overwhelming majority of states that used cyanide gas as a method of execution prior to *Gregg* have abandoned or rejected the use of lethal gas as a method of execution. *Id.* at 1405.

The District Court further found that the rejection of lethal gas as a method of execution occurred in large part because legislative histories, newspaper accounts, and public opinion polls demonstrate "[t]he gas chamber is widely viewed as an antiquated mode of execution, causing a slow, painful, and inhumane death." *Id.* at 1407.

On appeal, petitioners did not challenge the District Court's factual findings concerning the duration and intensity of the pain experienced by persons executed in the San Quentin gas chamber or the legislative abandonment of lethal gas as an acceptable means of execution. Instead, petitioners asserted that this action was not properly brought and that the District Court failed to properly interpret the Eighth Amendment.

The Court of Appeals unanimously found respondents' evidence of the horrific pain suffered by those executed in San Quentin's gas chamber so compelling as to establish an Eighth Amendment violation standing alone: "The district court's findings of extreme pain, the length of time this extreme pain lasts, and the substantial risk that inmates will suffer this extreme pain for several minutes require the conclusion that execution by lethal gas is cruel and unusual." *Fierro v. Gomez*, 77 F.3d at 309. Accordingly, the Court of Appeals found "no need for the district court to engage in the analysis of legislative trends," and did not undertake such analysis itself. *Id.* at 308.[1] In affirming the district court, the Court of Appeals concluded, "execution by lethal gas under the California protocol is unconstitutionally cruel and unusual and violates the Eighth and Fourteenth Amendments." *Id.* at 309.

REASONS WHY THE PETITION SHOULD BE DENIED

Despite the availability of lethal injection as a statutory means for carrying out executions in California[2] and despite the well-considered decisions of the lower courts in this case, petitioners persist in clinging to an outdated and inhumane execution apparatus. Petitioners assert that because "[n]o state or federal court ha[s] ever sustained a general challenge to a method of execution," certiorari is appropriate in this case. Petition at 4. As the Court of Appeals aptly recognized, however, no other state or federal court has ever been presented with a record as comprehensive and compelling as the record before the District Court. *Fierro*, 77 F.3d at 309. The decision below presents no new important question of constitutional interpretation, but rather

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[1] The district court consideration of the legislative repudiation of lethal gas as an acceptable means of execution resulted from its reading of the Ninth Circuit's opinion in *Campbell v. Wood*, 15 F.3d 662 (9th Cir.) (en banc), *cert. denied*. 114 S. Ct. 2125 (1994).

[2] Since the Ninth Circuit's opinion in this case, the State of California has conducted two lethal injection executions. On February 23, 1996, petitioners executed William Bonin. On May 3, 1996, petitioners executed Keith Williams.

simply the application of longstanding Eighth Amendment principles to the unique factual record in this case. Moreover, contrary to petitioners' assertions, certiorari is not warranted to establish "a uniform rule on this important issue," Petition at 4. The actions of state legislatures already have achieved such a rule. As the District Court concluded, the use of the gas chamber as a method of execution has been virtually abandoned by the States. The "important issue" on which petitioners seek this Court intervention is one that has been created solely by California's insistence on maintaining as an alternative method of execution that the rest of the country has abandoned or rejected. For these reasons, Respondents respectfully submit that this Court should deny the petition for writ of certiorari.

I.

THERE ARE NO CONFLICTS AMONG THE COURTS OF APPEAL BECAUSE THE DECISION BELOW TURNS UPON ITS OWN UNIQUE FACTS.

Despite petitioners' protestations, the decision of the Court of Appeals in this case does not conflict with the decisions of other courts because the decision below turns on its own unique facts. No other court, state or federal, has ever been presented with a record as comprehensive and compelling as that considered by the District Court in this case. In reaching its decision, the District Court carefully evaluated the testimony of eight experts and forty-six lay witnesses, reviewed extensive documentary evidence regarding lethal gas executions, examined a wealth of scientific and medical literature, and viewed the execution facilities at San Quentin. Respondents presented testimony from correctional personnel, scientific, and medical experts with a broad spectrum of expertise, criminal justice experts and legislators, as well as from witnesses to what was then *every* lethal gas execution in the United States since *Gregg v. Georgia*, 428 U.S. 153 (1976). Respondents also presented over 120 exhibits including *all* available official records on lethal gas

executions in California since the first use of the gas chamber in 1937. By contrast, petitioners relied at trial exclusively upon the largely theoretical and discredited testimony of two experts in toxicology.[3] Petitioners presented no evidence regarding the use of lethal gas as a method of execution, no testimony from eyewitnesses to gas chamber executions, and no testimony from any eyewitness to any other death resulting from cyanide gas inhalation.

Both the District Court and the Court of Appeals considered the official Execution Records -- prepared by San Quentin doctors who are employed by petitioners -- critical to the conclusion that death in San Quentin's gas chamber does not comport with the Eighth Amendment's prohibition against cruel and unusual punishments. The District Court found the Executions Records provide a clinical picture of what was observed during an execution in San Quentin's gas chamber. *Fierro*, 865 F. Supp. at 1400. The Records not only demonstrate that substantial periods of time elapse before inmates exposed to cyanide gas lose consciousness, but also document symptoms of extreme pain resulting from the intense air hunger inherent in cyanide gas executions. *Fierro*, 865 F. Supp. at 1403-04, 1412; *see also id.* at 1402 (official records of 120 executions document that average time to apparent unconsciousness was 1.57 minutes; time to "certain" unconsciousness significantly longer). The Court of Appeals found the official records to be "key pieces of evidence relied on by

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[3] For several reasons, the District Court rejected petitioners' experts conclusions that lethal gas executions are painless. *See Fierro*, 865 F. Supp. at 1399 n.8 (noting Dr. Baskin's misplaced and unscientific reliance on flawed dispersement study), 1403-04 (finding Dr. Baskin "failed to account for real-world data of the San Quentin execution records" and discrediting his theories), 1404 (rejecting immediate unconsciousness theory). Petitioners' primary expert, Dr. Baskin, demonstrated that his inability to "account for real-world data" extends to his expert views that it has not been proved that cyanide gas was used to exterminate individuals at Auschwitz and that, even if cyanide was used, people in the Auschwitz gas chambers did not suffer any pain. Supplemental Excerpt of Record 500, 502-515, in *Fierro v. Gomez*, 77 F.3d 301 (9th Cir. 1996).

the district court in the instant case to invalidate execution by lethal gas." *Fierro*, 77 F.3d at 309.[4]

Because respondents developed an extensive and unrebutted record in the case, the Ninth Circuit concluded that the decisions of the Fifth Circuit in *Gray v. Lucas*, 710 F.2d 1048 (5th Cir.), *cert. denied*, 463 U.S. 1237 (1983), and the Fourth Circuit in *Hunt v. Nuth*, 57 F.3d 1327 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 724 (1996), could not govern the legal issues raised by the State. The Court of Appeals recognized the uniqueness of the factual record before it: "The district court in the instant case conducted an eight-day trial and was the first to consider extensive evidence on the pain involved in execution by lethal gas, and the first to make extensive factual findings regarding this pain." *Fierro*, 77 F.3d at 309. The Court concluded that, unlike the case below, in *Gray* and *Hunt*, the appellate courts lacked the benefit of extensive expert testimony subject to searching cross-examination, official execution records documenting consciousness and pain during lethal gas executions, and the district court extensive findings based on such testimony and documentation. *Id.*

Nonetheless, petitioners assert that the decision of the Fourth Circuit in *Hunt* conflicts with the decision below because *Hunt* "refused to follow [the district court's decision in *Fierro*], even though many of the declarations considered by the district court in this case were also proffered in that case." Petition at 8. Although many of the declarations apparently presented to the district court in *Hunt* formed the basis for the district court's issuance of a temporary restraining order

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[4] Inexplicably, the Petition does not mention the critical role the State's Execution Records played in the District Court's findings. Rather, petitioners represent to this Court that the District Court's findings on are "based . . . on inferences from subjective descriptions of eyewitnesses to executions." Petition at 7. In light of the comprehensive and searching nature of the proceedings before the District Court, and the key role the Execution Records played in the decisions of the District Court and the Court of Appeals, petitioners' failure to portray accurately the evidence presented below can only be considered a disservice to this Court.

in this case in 1992, *see Fierro v. Gomez*, 790 F. Supp. 966 (N.D. Cal. 1992), petitioners' argument ignores that a trial was conducted in this case and that the District Court's and Court of Appeals' findings and conclusions are based on the extensive -- and unchallenged -- evidence presented by respondents.

Certiorari is appropriate to resolve conflicts among the Courts of Appeal in cases "in which the facts are substantially similar and the issues the same." *Newport News Shipbuilding & Dry Dock Co. v. Schauffler*, 303 U.S. 54, 55 (1938); *see Commissioner of Internal Revenue v. Hansen*, 360 U.S. 446, 450 (1959) (certiorari granted to resolve conflict among circuit courts in three cases involving similar facts and same issue). No true conflict exists, however, among decisions where the facts are not substantially similar. The factual record presented to the Courts of Appeal in this case and that presented to the Courts of Appeal in *Hunt* and *Gray* are dramatically different. There is no conflict among the decisions of the Courts of Appeal necessitating this Court's grant of the petition for writ certiorari.

The decision below also does not conflict with the state court decisions cited by Petitioners. Petition at 8 (citing *People v. Daugherty*, 40 Cal.2d 876, 894-96, 256 P.2d 911 (1953); *State v. Greenway*, 170 Ariz. 155, 823 P.2d 22, 27 (1991); *Calhoun v. State*, 297 Md. 348, 468 A.2d 45, 68-70 (1983); *Billiot v. State*, 454 So.2d 445, 464 (Miss. 1984); *Duissen v. State*, 441 S.W.2d 688, 693 (Mo. 1969)). In *Greenway*, *Calhoun*, and *Billiot*, the state courts, with little or no discussion, simply followed the decision of the Fifth Circuit in *Gray v. Lucas*. *See Greenway*, 170 Ariz. at 160, 823 P.2d at 27; *Calhoun*, 297 Md. at 615, 468 A.2d at 69-70; *Billiot*, 454 So.2d at 464. Lethal gas is no longer used as a method of execution in Missouri, so it is not necessary for this Court to resolve any conflict with the decision in *Duissen*.

Finally, in *Daugherty*, the California Supreme Court rejected a challenge to execution by

lethal gas by relying upon the presumption that any lethal gas administered by State of California officials would not cause suffering and torture:

> It may be said to be a scientific fact that a painless death may be caused by the administration of lethal gas. That suffering and torture may be inflicted by its administration is no argument against it. We must presume that the officials intrusted with the infliction of the death penalty by the use of gas will administer a gas which will produce no such results, and will carefully avoid inflicting cruel punishment. 40 Cal.2d at 895, 256 P.2d at 922.

Certainly, the factual record before the District Court below rebuts the "presumption," relied upon by the California Supreme Court in *Daugherty*, that California officials will use a lethal gas that causes a painless death. There is no conflict of decisions requiring this Court to grant the petition.

II.

THE PETITION PRESENTS NO IMPORTANT QUESTION OF CONSTITUTIONAL INTERPRETATION BECAUSE THE COURTS BELOW CORRECTLY APPLIED EIGHTH AMENDMENT JURISPRUDENCE TO THE UNIQUE FACTS IN THIS CASE.

Petitioners assert that certiorari should be granted because "the showing necessary to sustain an Eighth Amendment challenge to a method of execution is an important question of federal law that should be settled by this Court." Petition at 9. This Court's Eighth Amendment jurisprudence, including numerous decisions discussing the showing required to sustain a challenge to a method of execution, is well established. The Court of Appeals simply applied these principles to the unique factual record in this case and concluded that lethal gas executions, as performed in California, violate the prohibition against cruel and unusual punishments. This Court need not grant certiorari to reaffirm that torture violates the Eighth Amendment.

This Court's longstanding Eighth Amendment jurisprudence establishes that the prohibition against cruel and unusual punishment constrains the manner by which a state extinguishes human life. *See Wilkerson v. Utah*, 99 U.S. 130 (1879); *In re Kemmler*, 136 U.S. 436 (1890). "The

Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity and decency'" against which all forms of punishment must be evaluated. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968)). Although states have the power to impose punishments, the Amendment "stands to assure that this power be exercised within the limits of civilized standards." *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

These limitations apply with equal force when states impose the ultimate punishment: "The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence." *Louisiana ex rel. Francis Resweber*, 329 U.S. 459, 463 (1947) (opinion of Reed, J.). An execution method that involves "more that the mere extinguishment of life" is forbidden. *Kemmler*, 136 U.S. at 447. Indeed, this Court's conclusions regarding the constitutionality of capital punishment contained a recognition that "no court would approve any method of implementation of the death sentence found to involve unnecessary cruelty in light of presently available alternatives." *Furman v. Georgia*, 408 U.S. 238, 430 (1972) (dissenting opinion of Powell, J.).

What constitutes a "cruel and unusual" punishment "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S. 349, 378 (1910). Because "[t]ime works changes, [and] brings into existence new conditions and purposes," *id.*, the words "cruel and unusual" must be interpreted "in a flexible and dynamic manner." *Gregg*, 428 U.S. at 171 (opinion of Stewart, Powell, and Stevens, J.J.); *see also Trop*, 356 U.S. at 100-01. Consistent with the evolutionary nature of the Amendment, interpretation of what constitutes acceptable punishments may not be restricted to "what has been." *Weems*, 217 U.S. at 373. Rather, all punishments must be measured against "the evolving standards of decency that mark the progress of a maturing society." *Trop*, 356 U.S.

at 100.

The Court of Appeals simply enunciated and then applied these longstanding principles to the comprehensive factual findings in this case. The District Court found that cyanide gas causes death by asphyxiation, inmates executed in San Quentin's gas chamber by means of cyanide gas suffer intense, visceral pain akin to that of a major heart attack, and death by cyanide take *minutes* rather than seconds. In light of this evidence, the Court of Appeals correctly concluded that such "horrible pain, combined with the risk that such pain will last for several minutes, by itself is enough to violate the Eighth Amendment." *Fierro*, 77 F.3d at 308.

Certainly, a method of execution that imposes horrible pain for several minutes involves "more that the mere extinguishment of life," *Kemmler*, 136 U.S. at 447, and inflicts "unnecessary pain." *Louisiana ex rel. Francis*, 329 U.S. at 464 (plurality opinion), or "unnecessary cruelty in light of presently available alternatives." *Furman*, 408 U.S. at 430 (dissenting opinion of Powell, J.); *see also Gomez v. United States District Court*, 112 S. Ct. 1652, 1654 (1992) (dissenting opinion of Stevens and Blackmun, JJ.) The Court of Appeals was correct that well-established Eighth Amendment jurisprudence compelled the conclusion that execution by lethal gas pursuant to the California protocol is unconstitutionally cruel and unusual in violation of the Eighth Amendment.[5]

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[5] This conclusion is fully consistent with the various decisions finding that murder by means of strangulation constitutes a particularly inhumane form of killing and permitting aggravation of sentence based on such circumstances. In *Sochor v. Florida*, 504 U.S. 527 (1992), this Court discussed the Florida Supreme Court's construction of that state's "heinousness factor." Under state decisional law, the "heinousness factor" was interpreted as applying to crimes which are "'unnecessarily torturous to the victim.'" *Sochor*, 504 U.S. at 536 (quoting *State v. Dixon*, 283 So.2d 1, 9 (Fla. 1973)). This Court was "not trouble[d]" by the interpretation of the state court that "heinousness is properly found if the defendant strangled a conscious victim." *Id.* at 537 (citing cases).

III.

CERTIORARI IS NOT NECESSARY TO ESTABLISH A UNIFORM RULE BECAUSE STATE LEGISLATURES HAVE ABANDONED THE GAS CHAMBER AS AN ACCEPTABLE METHOD OF EXECUTION.

Petitioners assert that certiorari is necessary because "states deserve a uniform rule on this important issue of public policy." Petition at 4. The uniform rule that petitioners seek, however, already has been established by the abandonment of the gas chamber by state legislatures. As the District Court found, five states have abandoned lethal gas executions entirely, and no state has retained lethal gas as the sole method of execution. Of the remaining five states that have gas chambers, all have severely curtailed execution by lethal gas. The State of Mississippi employs lethal injunction for all persons sentenced on or after July 1, 1984. Miss. Code Ann. § 99-19-51 (1995). The State of Maryland mandates lethal injunction, except that persons sentenced prior to March 24, 1995, may choose lethal gas.[6] Md. Ann. Code art. 27, §§ 71-72 (1995). In Arizona, executions are performed by lethal injection, unless persons sentenced for offenses committed prior to November 23, 1992, affirmatively chose lethal gas. Ariz. Const. Art. 22 §22. Only in two states -- California and North Carolina -- will prisoners be executed by lethal gas unless they affirmatively choose to be executed by lethal injection. *Fierro*, 865 F. Supp. at 1405-06. As a result of legislative abandonment, lethal gas has been used in only a few executions. *Id.* at 1407 ("As of January 12, 1994, 226 persons had been executed since *Gregg v. Georgia*. Of this total, only eight executions (or less than four percent) had been conducted by the administration of lethal gas.").

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[6] Of the fourteen inmates currently on Maryland's death row, only one, Flint Gregory Hunt, has chosen to be executed by lethal gas. The Maryland Court of Appeals recently issued a stay of execution of Mr. Hunt's sentence. K. Shatzkin, "Killer's Motion Praying his Life will be Spared," *Baltimore Sun*, June 6, 1996.

The abandonment of lethal gas as a method of execution belies petitioners' assertions that there exist an "important question" requiring this Court's intervention.

CONCLUSION

The District Court conducted an exhaustive factual inquiry into the issues in this case and presented extensive factual findings concerning the unnecessary pain inflicted by lethal gas executions. A unanimous panel of the Court of Appeals examined the record in this case and concluded that the unrebutted factual findings warranted only one conclusion: that California's use of lethal gas as a means of execution violates the Eighth Amendment. Petitioners have failed to establish grounds for this Court to review the circuit court's decision. The petition for certiorari to review the judgment of the Court of Appeals should be denied.

DATED: June 10, 1996

Respectfully submitted,

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June 10, 1996

William K. Suter, Clerk
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Re: *Gomez v. Fierro*, No. 95-1830
Motion Leave to Proceed In Forma Pauperis
Brief in Opposition to Petition for Writ of Certiorari

Dear Mr. Suter:

I enclose an original and ten copies of Respondents' Motion for Leave to Proceed In Forma Pauperis and Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. I also enclose the original proof of service for these documents. In addition, I have enclosed two additional copies of the documents. I would appreciate having the additional copies file-stamped and returned in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,

Michael Laurence

Michael Laurence
Counsel for Respondents

Encls.

MDL:st

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